

IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE CONSENT ORDER

IN THE MATTER OF:

CITY OF OCHEYEDAN
Wastewater Facility No. 6-72-39-0-01

**ADMINISTRATIVE
CONSENT ORDER
NO. 2008-WW-13**

TO: City of Ocheyedan
c/o Honorable Mayor and Council
563 2nd Street, P.O. Box 129
Ocheyedan, IA 51354-0129

I. SUMMARY

This administrative consent order (order) is entered into between the City of Ocheyedan (City) and the Iowa Department of Natural Resources (Department). The parties hereby agree to the issuance of this order for the purpose of resolving effluent limit violations and operation and maintenance violations at the City's wastewater treatment facility (WWTF). The City hereby agrees to comply with the schedule contained in this order for wastewater facility improvements, to properly operate and maintain the existing wastewater collection and treatment facilities, and to pay penalties as set forth in this order. In the interest of avoiding litigation, the parties have agreed to the following provisions.

Any questions regarding this order should be directed to:

Relating to technical requirements:

Tom Roos, Environmental Specialist
IDNR Field Office No. 3
1900 N. Grand, Gateway North Suite E17
Spencer, IA 51301-2200
Ph: 712/262-4177

Relating to legal requirements:

Diana Hansen, Attorney at Law
Iowa Department of Natural Resources
Henry A. Wallace Building, 502 E. 9th St.
Des Moines, Iowa 50319-0034
Ph: 515/281-6267

II. JURISDICTION

The parties hereby agree that this order is issued pursuant to Iowa Code section 455B.175(1), which authorizes the Director to issue any order necessary to secure

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compliance with or prevent a violation of Iowa Code chapter 455B, Division III, Part I, and the rules promulgated or permits issued pursuant thereto, and Iowa Code section 455B.109 and 567 Iowa Administrative Code (IAC) chapter 10, which authorize the Director to assess administrative penalties.

III. STATEMENT OF FACTS

The parties agree to the following statement of facts.

1. The City owns and operates a WWTF located in Section 11, Township 99N, Range 40W, Osceola County, Iowa. The City's municipal wastewater treatment facility consists of a gravity flow collection system and a two cell facultative waste stabilization lagoon.

Treated wastewater is discharged through a tile line to Rush Lake Creek and then to the Ocheyedon River, pursuant to Iowa NPDES Permit No. 6-72-39-0-01. The NPDES permit contains monitoring and effluent limitations for the discharge of pollutants, including CBOD5 and TSS.

2. The City's NPDES permit requires this facility to store wastewater for approximately 180 days and to discharge only twice per year in the spring and fall when stream flows are the lowest. Effluent data collected for this facility indicates that this facility discharges more than twice per year, contrary to this facility's NPDES permit. During 2004 this facility discharged wastewater six times during eight months for a total of 120 days of discharge. For the first six months of 2005 the facility discharged three times for a total of 90 days of discharge. For the first five months of 2007, the facility discharged nearly every month. The facility has continued to discharge more than the twice per year authorized by its NPDES permit and current design standards for wastewater controlled discharge lagoons.

3. The Department's Field Office No. 3 (FO 3) conducted an inspection on May 29, 2007. The inspection report noted that this facility had a thirty day average TSS concentration violation and a seven day average TSS concentration violation for January 2006. For February 2007 this facility had a thirty day average CBOD5 concentration violation and a seven day average CBOD5 concentration violation. This facility had a thirty day average CBOD5 concentration violation and a seven day average CBOD5 concentration violation for March 2007. The inspection report noted that violations of permit effluent limits were in violation of Department subrule 567 IAC 64.3(1). The inspection report also noted that influent flows to the facility were exceeded during 13 months since the prior inspection in February 7, 2005. The inspection report also commented on the City's collection system. The inspection report noted that influent flows to the WWTF continued to exceed the lagoon's hydraulic design capacity.

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4. Due to noncompliance with the City's permit, FO 3 issued a Notice of Violation letter on February 28, 2006. FO 3 required this facility to retain the services of a consulting engineer to evaluate alternatives for the City's wastewater treatment and collection system improvements and to develop a Facility Plan for the City. The City has hired an engineer to develop a Facility Plan and schedule for WWTF improvements. The engineer informed FO 3 that the City's old flow meter was unreliable and inaccurate during heavy flow periods. The City installed a new flow meter in November 2006 to collect more reliable data. The engineer requested that the City be allowed to collect flow data prior to submitting a Facility Plan.

IV. CONCLUSIONS OF LAW

The parties agree that the following conclusions of law are applicable to this matter.

1. Iowa Code section 455B.186 prohibits the discharge of pollutants into waters of the state, except for adequately treated pollutants discharged pursuant to a permit. Iowa Code section 455B.183 prohibits the operation of a wastewater disposal system without a permit from the Department.

2. Iowa Code section 455B.173 authorizes and requires the Environmental Protection Commission to promulgate rules relating to the operation of waste disposal systems, including rules relating to monitoring and reporting requirements. The Commission has done so at 567 IAC chapters 60- 64. Subrule 64.3(1) prohibits the operation of a waste disposal system without or contrary to the terms of a permit. Subrule 64.7 specifies the conditions that are to be included in a permit, including applicable effluent limitations in chapters 61 and 62 of the rules. The City has not complied with the effluent limits in its NPDES permit.

3. The City's NPDES permit requires these facilities to be adequately operated and maintained. Standard Condition 8 of the permit provides that all facilities and control systems shall be operated as efficiently as possible and maintained in good working order. This standard permit condition is based upon subrule 64.7(5)"f". This subrule states "the permittee at all times shall maintain in good working order and operate as efficiently as possible any facilities or systems of control to achieve compliance with the terms and conditions of the permit." The fact that the influent flows to the City's WWTF exceed the facility's hydraulic design capacity demonstrates that the City is not properly operating and maintaining the City's wastewater treatment and collection facilities.

4. This facility's NPDES permit requires that the City's lagoon system be operated as a controlled discharge facility with two discharges per year. **"Continuous discharge of wastewater from this facility is prohibited.** The treatment plant must be operated using a storage/drawdown mode of operating. Wastewater must be stored for approximately 180 days after which time the water level is to be lowered to make room for the next

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storage period. Lagoon drawdown should occur in the spring and fall and at times when flow in the receiving stream is at a minimum." The City has not operated and maintained its WWTF in accordance with its NPDES permit.

5. The City's failure to meet the effluent limits in its NPDES permit and failure to comply with the proper operation and maintenance and the controlled discharge provisions in its NPDES permit noted above violate these provisions.

V. ORDER

THEREFORE, the Department orders and the City agrees to comply with the following provisions in order to cease, abate, and redress the above-cited violations:

1. All facilities and control systems shall be operated as efficiently as possible and maintained so as to achieve optimum treatment and effluent quality at all times.

2. The City is required to collect flow data through July 31, 2008 and submit a report concerning flows to the Department project manager by September 1, 2008.

3. The City is required to submit a complete Facility Plan with all required schedules by October 1, 2008. The Facility Plan is required to be completed in accordance with Chapter 11 of the Iowa Wastewater Facilities Design Standards.

4. The City is required to submit the IUP application and NPDES permit application to the Department by October 1, 2008.

5. The City is required to submit complete final plans and specifications meeting Department design standards and a complete application for a construction permit on the Department's forms for facility improvements by April 1, 2009.

6. The City is required to start construction of facility improvements authorized by the Department's construction permit by August 1, 2009.

7. The City is required to complete construction of the facility improvements authorized by the Department's construction permit and comply with all permit and design requirements by August 1, 2010. The City is required to achieve compliance with final effluent limits by September 1, 2010.

8. The City agrees to the payment of a stipulated penalty in the amount of \$100.00 per day or part of a day that the interim deadlines in Paragraphs V.3, V.5, and V.6 are not met. The City agrees to the payment of a stipulated penalty in the amount of \$100.00 per day that the final completion of construction deadline of August 1, 2010 is not met.

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Payment is due to the Department within sixty days of the particular deadline that is not met by the City.

VI. PENALTY

1. Iowa Code section 455B.191 authorizes the assessment of civil penalties of up to \$5,000.00 per day of violation for the violations involved in this matter. More serious criminal sanctions are also available pursuant to that provision.

2. Iowa Code section 455B.109 authorizes the Environmental Protection Commission to establish by rule a schedule of civil penalties up to \$10,000.00 that may be assessed administratively. The Commission has adopted this schedule with procedures and criteria for assessment of penalties in Chapter 567 IAC chapter 10. Pursuant to these rules the Department has determined that the most effective and efficient means of addressing the above-cited violations is the issuance of an order with stipulated penalties for violation of the compliance schedule in this order.

The penalties stipulated to by the parties in this order are for future violations, if they occur. The stipulated penalties are designed to reflect the potential economic benefit to the City for failure to make the expenditures needed to stay on schedule. Such penalties are related to the probable severity of the violations in that not meeting the compliance schedule in this order is a fairly serious matter in view of past deficiencies. The penalties would also be related to future culpability in that the City has been put on notice by this order that stipulated penalties will result if the compliance schedule is not met.

VII. WAIVER OF APPEAL RIGHTS

Iowa Code section 455B.175, and 561 IAC 7.5(1), as adopted by reference by 567 IAC chapter 7, authorize a written notice of appeal to the Environmental Protection Commission. This order is entered into knowingly by and with the consent of the City. By signature to this order, all rights to appeal this order are waived.

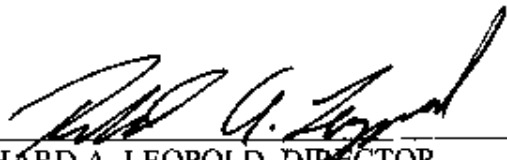
VIII. NONCOMPLIANCE

Compliance with V.1 through V.7 of this order constitutes full satisfaction of all requirements pertaining to the violations described in this order. Failure to comply with this order may result in the imposition of administrative penalties pursuant to an administrative order or referral to the Attorney General to obtain injunctive relief and civil penalties pursuant to Iowa Code section 455B.191. The Department reserves the right to issue a new administrative order or to refer to the Attorney General's Office in lieu of collecting stipulated penalties pursuant to this order.

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ARLYN PEDLEY
MAYOR OF OCHEYEDAN

Dated this 14 day of
April, 2008.


RICHARD A. LEOPOLD, DIRECTOR
IOWA DEPARTMENT OF NATURAL RESOURCES

Dated this 25 day of
April, 2008.

City of Ocheyedan- Wastewater Facility No. 6-72-39-0-01; Tom Roos- Field Office 3;
Michael Chyi- Wastewater Construction Secion, Diana Hansen- Legal Services; U.S
E.P.A. Region VII, I.B.2.b, I.B.2.c., and I.B.2.d.